

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

.
MARIE JOSEPH, . Case No. 1:16-cv-465
Plaintiff, . **Day 10 of Jury Trial**
- v - .
RONALD JOSEPH, et al., . Monday, October 22, 2018
Defendants. . 9:32 AM
. Cincinnati, Ohio

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE TIMOTHY S. BLACK, JUDGE, AND JURY

APPEARANCES:

For the Plaintiff: KEVIN L. MURPHY, ESQ.
J. JEFFREY LANDEN, ESQ.
NICHOLAS R. GREGG, ESQ.
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For the Defendant Ronald Joseph:

JAMES E. BURKE, ESQ. JAMES C. FROOMAN, ESQ.
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Also present: Christine Duggins, Paralegal
Donnie Guillory, IT
Marie Joseph
Ronald Joseph

Law Clerk: Jeremy D. Smith, Esq.

Courtroom Deputy: Scott M. Lang

Court Reporter: Luke T. Lavin, RDR, CRR

P R O C E E D I N G S

(In open court at 9:32 AM, no jury present.)

THE COURT: Please be seated.

Good morning. We're back in the open courtroom on the record. The jury is upstairs ordering their lunch, and we are prepared to proceed to instruction on the law and closing argument.

Plaintiff is here with her lawyers. Defendant is here with his lawyers.

Are we ready to get the jury, or are there issues we ought to address before we get them? First, from the plaintiff?

MR. BURKE: Just briefly, Your Honor.

THE COURT: Yes.

MR. BURKE: I assume that both sides are reserving any objections that they raised at the charging conference to the final jury instructions.

THE COURT: Indeed.

MR. BURKE: Thank you.

THE COURT: Very well.

MR. BURKE: One other thing, Your Honor. I assume, but you tell me if you disagree, that you read the instructions, Mr. Murphy will go, and I'll continue, as opposed to taking some kind of a break for lunch, even if we go a little bit past noon?

THE COURT: I'm inclined to do that, but I welcome to

1 hear either side.

2 MR. BURKE: Okay.

3 MR. MURPHY: Your Honor --

4 THE COURT: Yes.

5 MR. MURPHY: -- it's my understanding that the
6 plaintiff closes, the plaintiff goes last.

7 MR. BURKE: I'm not suggesting anything else.

8 THE COURT: Right. You go first and last or --

9 MR. MURPHY: Yes, that Jim closes first and then I do.

10 THE COURT: And is that the defendant's perspective?

11 MR. BURKE: That's not what I thought, but fine with
12 me, Your Honor.

13 THE COURT: Very well. Because -- hang on. Let's
14 just talk this through. I'm not fully invested in it. If you
15 both agree, you both agree. But typically plaintiff has the
16 first word and the last word. Given the burden shifting, why
17 is it that plaintiff wants to go second rather than first and
18 last?

19 MR. MURPHY: It's always been my experience in federal
20 court that the plaintiff opens, goes first in the opening, and
21 then the plaintiff closes and goes last. That's always been my
22 experience.

23 THE COURT: That's what I was saying. You would go
24 first, he would go second, you would have the last word.

25 MR. MURPHY: All right.

1 THE COURT: Is that what you wanted or intended? I
2 misunderstand.

3 MR. BURKE: I think that's right. I think Kevin goes
4 first, I go second, then Mr. Murphy gets to stand up and do
5 whatever rebuttal he thinks is appropriate.

6 THE COURT: That's typically the way it goes.
7 Does Ms. Rowe agree with you?

8 MS. ROWE: I do. Thank you, Your Honor.

9 THE COURT: I just want to shake this out. I don't
10 understand what you're saying. Is that the way you would
11 prefer to do it?

12 MR. MURPHY: I prefer that Mr. Burke goes and then I
13 go next.

14 THE COURT: And then we're done?

15 MR. MURPHY: Right.

16 THE COURT: And why would the plaintiff not close
17 first? I mean, that's your experience in all cases, is it not?

18 MR. MURPHY: It's been my experience that when the
19 trial starts, the plaintiff does opening statement first, then
20 the defendant speaks, and then at the end of the trial, the
21 defendant does his closing argument first and then the
22 plaintiff. That's been my experience.

23 THE COURT: That's crazy, but --

24 MR. BURKE: It's not my experience, Your Honor, and I
25 think the ordinary way it's ordinarily done is they go first at

1 the beginning, they go first at the end.

2 THE COURT: Well, I think going first and last is a
3 good thing.

4 MR. MURPHY: All right.

5 THE COURT: We will proceed in that way.

6 MR. MURPHY: Okay.

7 THE COURT: Now, are you planning to show the jury
8 demonstrative stuff or evidence? First, from the plaintiff's
9 perspective?

10 MR. MURPHY: Yes.

11 THE COURT: And the demonstrative charts that are not
12 in evidence but are assisting in closing argument are not going
13 to the jury; correct?

14 MR. MURPHY: That is correct.

15 THE COURT: And the defense agrees?

16 MR. BURKE: That is correct. There were some
17 demonstratives, as you know, that were admitted, and we will
18 point those out, but there are others that will not go back to
19 the jury, correct.

20 THE COURT: Very well.

21 Is there anything else we need -- well, the jury's going to
22 come down, I'm going to read them the instructions, and that's
23 going to take a while, at least an hour. And then we're just
24 going to roll straight into closing argument. The plaintiff
25 understands?

1 MR. LANDEN: Yes, Your Honor.

2 THE COURT: And the defense as well?

3 MR. BURKE: The only thing we need, Your Honor, is a
4 little bit of time for the IT folks to turn the podium
5 sideways, that's all.

6 THE COURT: I will grant you that concession.

7 MR. BURKE: Thank you.

8 THE COURT: Very well.

9 Yes, sir?

10 MR. LANDEN: Your Honor, one other point on the jury
11 instructions.

12 THE COURT: Yes.

13 MR. LANDEN: Both sides are preserving their
14 objections from the jury charging conference.

15 THE COURT: But of course.

16 MR. LANDEN: And we simply want to note an objection
17 to just -- not to reargue it but just to note our objection.
18 On the variation that came out over the weekend, there's an
19 instruction there or some instructions there that were not what
20 we had asked for and not necessarily what the other side had
21 asked for either, and we just want to preserve our objections
22 on those as well.

23 THE COURT: All objections are preserved.

24 MR. LANDEN: Thank you, Your Honor.

25 THE COURT: It's the Judge's responsibility to shake

1 through the opposing proposed instructions, and then it's in
2 its discretion to do what the evidence and the law requires.

3 MR. LANDEN: We understand.

4 THE COURT: Very well.

5 MR. LANDEN: Thank you.

6 THE COURT: Let's get the jury.

7 COURTROOM DEPUTY: All rise for the jury.

8 (Jury in at 9:38 AM.)

9 THE COURT: The jurors can be seated as they join us,
10 the court reporter as well.

11 You may all be seated. Thank you. The seven members of
12 the jury have joined us this Monday morning. Good morning.

13 MEMBERS OF THE JURY: Good morning.

14 THE COURT: We have reached the rubicon. I'm going to
15 instruct you in the law, and then the lawyers are going to make
16 closing argument that's not evidence but designed to persuade
17 you.

18 I'm required by law to read you the jury instructions.
19 I've provided you with a packet, each of you with a packet.
20 Some people retain best by hearing, some people retain best by
21 reading; you can do both. I think it's 56 pages, if you don't
22 count the covering stuff, so brace yourself.

23 The last time somebody read out loud to me was my mother
24 trying to put me to sleep. That's not the design here. The
25 Court and the community appreciate your close attention

1 throughout this trial. I've been watching.

2 Members of the jury, you've heard the evidence and the
3 arguments of counsel. It's now the duty of the Court to
4 instruct you on the law which applies to this case.

5 The Court, the Judge, and the jury have separate functions.
6 You decide the disputed facts, and I give the instructions of
7 law. It's your sworn duty to accept these instructions and to
8 apply the law as it is given to you. You're not permitted to
9 change the law or apply your own idea of what you think the law
10 should be.

11 You have two main duties as jurors. The first duty is to
12 decide what the facts are from the evidence that you saw and
13 heard here in the courtroom. Deciding what the facts are is
14 your job, not mine, and nothing I have said or done during the
15 trial was meant to influence your decision about the facts in
16 any way.

17 Your second duty is to take the law that I give you and
18 apply it to the facts. It's my job to instruct you about the
19 law, and you're bound by the oath that you took at the
20 beginning of the trial to follow the instructions that I give
21 you, even if you personally disagree with them. This includes
22 the instructions that I gave you before and during the trial,
23 and these instructions. All the instructions are important,
24 and you should consider them as a whole.

25 The lawyers will talk about the law during their closing

1 argument perhaps, but if what they say is different from what I
2 say and what is written here, you must follow what I say. What
3 I say about the law controls.

4 Perform these duties fairly. Do not let any bias,
5 sympathy, or prejudice that you may feel toward one side or the
6 other influence your decision in any way. I'll provide some
7 background on the parties in this case.

8 In a civil case, a plaintiff asserts a claim against the
9 defendant. The plaintiff in this case is Marie Joseph. The
10 defendant in this case is Ronald Joseph. I'll later describe
11 the legal claim asserted in the case.

12 The plaintiff and the defendant are brother and sister with
13 the same last name. In these jury instructions I'll sometimes
14 refer to plaintiff as "Marie" rather than as Ms. Joseph, and
15 refer to the defendant as "Ron" rather than as Mr. Joseph. You
16 may have noticed that counsel and some witnesses have done the
17 same. This does not imply any personal familiarity with either
18 of the parties or favoritism toward either one of them, nor is
19 it intended as a signal of disrespect to either of them. The
20 use of their first names is simply an effort to avoid
21 confusion.

22 Columbia Oldsmobile Company, which I will refer to as
23 "Columbia," is not a party to this case, but Marie's
24 allegations relate to Columbia. Columbia is a closely held
25 corporation organized under the laws of the state of Ohio. A

1 closely held corporation is a corporation that has relatively
2 few shareholders and whose shares are not traded in the stock
3 market.

4 As to the burden of proof, the person who claims that
5 certain facts exist must prove them by a preponderance of the
6 evidence. This duty is known as the burden of proof.

7 Preponderance of the evidence is the greater weight of the
8 evidence, that is, evidence that you believe because it
9 outweighs, in your mind, the evidence opposed to it. A
10 preponderance means evidence that is more probable, more
11 persuasive, or of a greater probative value. You must weigh
12 the quality of the evidence. Quality may or may not be
13 identical with the greater number of the witnesses.

14 So as to the nature of this action, the plaintiff, Marie,
15 has asserted a claim against the defendant, Ron, which will be
16 discussed in more detail. For now, it's sufficient to state
17 that Marie asserts a claim against Ron for breach of fiduciary
18 duties, which is solely related to the corporate activities of
19 Columbia, of which Ron is a majority shareholder and Marie is a
20 minority shareholder.

21 The plaintiff, in this case Marie, has the burden in a
22 civil case to prove every essential element of her claim. In
23 this civil case, Marie must prove each element of her claim for
24 breach of fiduciary duties by a preponderance of the evidence.

25 Marie's claim for breach of fiduciary duties is premised on

1 multiple alleged actions and omissions. In other words, Marie
2 alleges that multiple actions and omissions allegedly taken or
3 not taken by Ron each constitute a breach of fiduciary duty.
4 You should consider each act or omission that Marie claims
5 constitutes a breach of fiduciary duty separately.

6 If Marie establishes all the elements of her breach of
7 fiduciary duties claim by the preponderance of the evidence for
8 any particular act or omission, you must find for Marie as to
9 that act or omission. If Marie fails to establish any element
10 of her claim by the preponderance of the evidence for any
11 particular act or omission, you must find for Ron as to that
12 act or omission.

13 Evidence is all the testimony received from the witnesses,
14 including depositions, exhibits admitted during the trial, any
15 facts agreed to by the lawyers, and any facts which the Court
16 requires you to accept as true. Evidence may be direct or
17 circumstantial, or both.

18 Direct evidence is the testimony given by a witness who has
19 seen or heard the facts to which he or she testifies. It
20 includes exhibits admitted into evidence during the trial and
21 the stipulations that you are instructed to accept as fact.

22 Circumstantial evidence is the proof of facts or
23 circumstances by direct evidence from which you may reasonably
24 infer other related or connected facts which naturally and
25 logically follow, according to the common experience of

1 humankind.

2 To infer, or to make an inference, is to reach a reasonable
3 conclusion of fact, which you may, but are not required to,
4 make from other facts which you find have been established by
5 direct evidence. Whether an inference is made rests entirely
6 with you.

7 You may infer a fact or facts only from other facts that
8 have been proved by the greater weight of the evidence, but you
9 may not infer a fact or facts from a speculative or remote
10 basis that has not been established by the greater weight of
11 the evidence.

12 Counsel may have agreed upon written stipulations and
13 exhibits concerning certain evidence, and these will be with
14 you during your deliberations.

15 What evidence excludes. Evidence does not include the
16 pleadings or any statement of counsel made during the trial,
17 unless such statement was an admission or agreement admitting
18 certain facts. The opening statements and the closing
19 arguments of counsel are designed to assist you, but they are
20 not evidence.

21 Statements or answers ordered stricken, or to which the
22 Court sustained an objection, or which you were instructed to
23 disregard, are not evidence and must be treated as though
24 you've never heard them.

25 You must not guess why the Court sustained an objection to

1 any question or what the answer to the question might have
2 been. You must not consider as evidence any suggestion
3 included in a question that was not answered.

4 Some charts and summaries have been shown to you in order
5 to help explain facts disclosed by books, records, and other
6 documents in evidence in the case. These charts or summaries
7 are not themselves evidence unless they were admitted into
8 evidence or proof of any facts. If the charts or summaries do
9 not correctly reflect facts or figures shown by the evidence in
10 the case, you should disregard them.

11 Charts and summaries are used as a matter of convenience.
12 To the extent that you find they are not truthful summaries of
13 facts or figures shown by the evidence in the case, you should
14 disregard them entirely.

15 As to credibility, you are the sole judges of the
16 credibility of the witnesses and the weight their testimony
17 deserves. You may be guided by the appearance and conduct of
18 the witness, or the manner in which the witness testifies, or
19 by the character of the testimony given, or by evidence
20 contrary to the testimony.

21 You should carefully examine all of the testimony given,
22 circumstances under which each witness has testified, and every
23 matter in evidence tending to show whether a witness is worthy
24 of belief. Consider each witness' intelligence, motive and
25 state of mind, and demeanor or manner while testifying.

1 Consider the witness' ability to observe the matters as to
2 which the witness has testified, and whether the witness
3 impresses you as having an accurate recollection of these
4 matters. Also consider any relation each witness may have with
5 either side of the case, the manner in which each witness might
6 be affected by the verdict, and the extent to which the
7 testimony of each witness is either supported or contradicted
8 by other evidence in the case.

9 Inconsistencies or discrepancies in the testimony of a
10 witness, or between the testimony of different witnesses, may
11 or may not cause you to discredit such testimony. Two or more
12 persons seeing an event may see or hear it differently.

13 In weighing the effect of a discrepancy, always consider
14 whether it pertains to a matter of importance or an unimportant
15 detail, and whether the discrepancy results from innocent error
16 or intentional falsehood.

17 After making your own judgment, you will give the testimony
18 of each witness such weight, if any, that you may think it
19 deserves. In short, you may accept or reject the testimony of
20 any witness, in whole or in part.

21 In addition, the weight of the evidence is not necessarily
22 determined by the number of witnesses testifying to the
23 existence or non-existence of any fact. You may find that the
24 testimony of a smaller number of witnesses as to any fact is
25 more credible than the testimony of a larger number of

1 witnesses to the contrary.

2 The Rules of Evidence ordinarily do not permit witnesses to
3 testify as to opinions or conclusions. There is an exception
4 to this rule for expert witnesses. An expert witness is a
5 person who, by education and experience, has become an expert
6 in some art, science, profession, or calling. Expert witnesses
7 state their opinions as to the matters in which they profess to
8 be an expert and may also state their reasons for their
9 opinions.

10 You should consider each expert opinion received in
11 evidence in this case and give it such weight as you think it
12 deserves. If you should decide the opinion of an expert is not
13 based upon sufficient evidence and experience, or if you should
14 conclude the reasons given in support of the opinion are not
15 sound, or if you feel the expert's testimony is outweighed by
16 evidence, other evidence, you may disregard the opinion
17 entirely. You decide who to believe.

18 Normally a lay witness, that is, a witness who is not
19 identified as an expert, may not express an opinion. However,
20 a lay witness may offer an opinion that's rationally based on
21 the witness' perception. Lay witness opinions may be based on
22 particularized knowledge acquired by the witness by virtue of
23 his or her position in a business.

24 In deciding the value of a lay opinion, you will consider
25 the opportunity the witness had to observe the facts and his or

1 her knowledge of and experience with those facts. In addition,
2 you will apply the usual rules for testing credibility and
3 deciding the weight to be given to the testimony.

4 A witness may be discredited or impeached by contradictory
5 legal evidence, by a showing that he or she testified falsely
6 concerning a material matter, or by legal evidence that at some
7 other time the witness has said or done something or has failed
8 to say or do something which is inconsistent with the witness'
9 present testimony.

10 In addition, a witness may be discredited or impeached by
11 showing that the witness has made a false statement, whether
12 under oath or not, in other circumstances in which the witness
13 had a motive to make false statements.

14 If you believe that any witness has been so impeached, then
15 it's your exclusive province to give the testimony of that
16 witness such credibility or weight, if any, as you may think it
17 deserves.

18 If a witness is shown knowingly to have testified falsely
19 concerning any material fact, you have a right to distrust such
20 witness' testimony on other particulars, and you may reject
21 part or all of the testimony of that witness or give it such
22 weight as you may think it deserves.

23 An act or omission is "knowingly" done if done voluntarily
24 and intentionally, and not because of mistake or accident or
25 some other innocent reason.

1 As to exhibits, a number of exhibits and testimony related
2 to them have been introduced. You will determine what weight,
3 if any, the exhibits should receive in the light of all the
4 legal evidence.

5 You may note that some documents have not been introduced
6 and are not exhibits with you in the jury room. These
7 documents are not legal evidence. We will send binders
8 upstairs with all of the exhibits that are before you.

9 Very well. As to plaintiff's claim, now my instructions
10 will focus on the specific allegations and defenses for this
11 lawsuit. I will explain the legal terms used here after I
12 provide a general overview of Marie's claim.

13 Marie has asserted a claim for breach of fiduciary duties
14 against Ron, for which she seeks damages. Marie alleges that
15 on and after April 12, 2012, Ron, the majority shareholder of
16 Columbia, breached fiduciary duties he owed to Marie as a
17 minority shareholder of Columbia and that these breaches
18 proximately caused Marie financial damages. Ron denies that he
19 breached any fiduciary duties, denies that any of the
20 transactions or actions about which Marie complains harmed
21 Columbia or Marie in any way, and asserts that these
22 transactions and actions were fair to Columbia and its
23 shareholders.

24 Though Marie's claim is premised on numerous transactions,
25 she alleges that Ron breached his duties in two ways:

1 First, Marie alleges that Ron breached duties owed to her
2 as a shareholder of Columbia by engaging in unauthorized and
3 undisclosed self-dealing transactions involving Columbia and
4 its subsidiaries, on the one hand, and Ron, his sons, or
5 entities they own or control on the other. The alleged
6 transactions at issue include:

7 Number one: Management fees paid by Columbia Automotive,
8 Inc. and Columbia Development Corporation to Pond Realty
9 Company, doing business as Joseph Management Company, an entity
10 that Ron's sons own and of which Ron is the president.

11 Number two: Other transfers from Columbia and its
12 subsidiaries to Pond Realty Company.

13 Three: Fleet sales transactions between Columbia and
14 entities owned or controlled by Ron and his sons including, but
15 not limited to, Joseph Chevrolet Company, Joseph T of C Co.,
16 Inc., Joseph Buick-GMC Truck, Inc. and Camargo Cadillac.

17 Four: Disbursements of Columbia's money to Pond Realty
18 Company to be held in the sweep account, also known as the U.S.
19 Bank Money Center account.

20 Five: Disbursements of money in the form of loans and/or
21 investments from Columbia Development Corporation to Camargo
22 Cadillac Company, Joseph Development, and Gold Circle Mall.

23 Six: Using Columbia employees to perform work for Ron and
24 for other entities he owns or controls.

25 Seven: Using Columbia funds to pay for personal expenses,

1 such as county club expenses, dining club dues, continuing
2 legal education expenses, security services, Cincinnati Reds
3 tickets, and other items such as food and meals.

4 Ron denies all of these allegations and asserts that all of
5 these transactions were fair to Columbia and that all of the
6 transactions ultimately benefited Columbia and Marie.

7 Second, Marie alleges that Ron breached duties owed to her
8 as a minority shareholder of Columbia by usurping or taking
9 corporate opportunities for himself by causing other companies
10 to acquire two lots of land. One of the lots is located at
11 3464 Poole Road and was acquired by Joseph T of C in 2012. The
12 other lot is located at 8583 Colerain Avenue and was acquired
13 by Joseph Realty LLC in 2014. I'll refer to both lots
14 collectively as the "parking lots." Marie alleges that the
15 opportunity to acquire the parking lots should have been
16 offered to Columbia and Ron's failure to do so harmed Columbia
17 and caused Marie damages.

18 Ron denies that he was involved with the purchase of the
19 parking lots, denies that he had an obligation to offer the
20 opportunity to acquire the parking lots to Columbia, and denies
21 that the purchase of the parking lots by other entities harmed
22 Columbia or caused damage to Marie.

23 Marie's claim for breach of fiduciary duties is limited to
24 alleged acts or omissions by Ron that occurred on or after
25 April 12, 2012. Any evidence or testimony concerning acts or

1 omissions that took place before April 12, 2012 is relevant
2 only to the extent it might support the elements of Marie's
3 claim with respect to acts or omissions that took place on or
4 after April 12, 2012.

5 As to the elements of breach of fiduciary duties, Marie's
6 claim, to prove her claim for breach of fiduciary duties
7 against Ron, the law requires Marie to establish: one, the
8 existence of a duty owed by Ron arising from a fiduciary
9 relationship between Ron and Marie; two, a failure by Ron to
10 observe that duty; and, three, an injury or damage to Marie
11 resulting proximately from Ron's failure to observe a fiduciary
12 duty owed to Marie. Marie must prove each one of these
13 elements by a preponderance of the evidence. In the next
14 several instructions, I'll explain each of these three elements
15 in greater detail.

16 The first element: duty. To satisfy the first element of
17 her claim, Marie must prove by a preponderance of the evidence
18 that Ron had a duty to Marie arising from a fiduciary
19 relationship.

20 A fiduciary is a person having a duty, created by his or
21 her undertaking, to act primarily for the benefit of another in
22 matters connected with the undertaking.

23 In a close corporation, a majority shareholder occupies a
24 position of trust in relation to the corporation and to
25 minority shareholders. Therefore, both parties agree that Ron

1 owed fiduciary duties to Marie in her capacity as a minority
2 shareholder of Columbia regarding matters connected with
3 Columbia. These duties include but are not limited,
4 necessarily, to the duty to refrain from self-dealing, a duty
5 of disclosure, a duty of loyalty, and a duty of utmost good
6 faith.

7 As to the second element -- breach -- the second element of
8 Marie's claim is that she must prove by a preponderance of the
9 evidence that Ron breached the fiduciary duties he owed to
10 Marie.

11 As I've explained, Marie alleges that Ron breached
12 fiduciary duties in two different ways: one, by engaging in
13 self-dealing transactions with Columbia on one side of the
14 transaction and companies Ron and/or his sons own or have an
15 interest in on the other side; and, two, usurping corporate
16 opportunities by acquiring two parking lots for other companies
17 without first offering the opportunity to acquire the parking
18 lots to Columbia.

19 In the next several instructions, I will explain what Marie
20 must prove by a preponderance of the evidence in order to
21 establish that the alleged self-dealing transactions, and the
22 alleged usurpation of corporate opportunities, constitute a
23 breach of fiduciary duties.

24 Keep in mind that Marie alleges multiple actions or
25 omissions taken by Ron each constitute a breach of fiduciary

1 duty. If Marie is able to show by a preponderance of the
2 evidence that one action or omission by Ron was a breach of
3 fiduciary duty, it does not necessarily follow that the other
4 alleged actions or omissions were also breaches of fiduciary
5 duty. Similarly, if Marie is not able to show that one action
6 or omission by Ron was a breach of fiduciary duty, it does not
7 necessarily follow that the other alleged actions or omissions
8 also do not constitute breaches of fiduciary duty. You must
9 consider whether each act and omission alleged by Marie
10 constitutes a breach of fiduciary duty.

11 As to usurpation of corporate opportunities, Marie alleges
12 that Ron breached fiduciary duties owed to her by allegedly
13 usurping corporate opportunities in connection with the
14 acquisition of the two parking lots by Joseph T of C and Joseph
15 Realty LLC. Marie alleges the opportunity to acquire these
16 parking lots should have been, but were not, presented to
17 Columbia.

18 In order to prove that Ron's failure to offer the
19 opportunity to acquire a particular parking lot to Columbia
20 constituted a breach of fiduciary duties, Marie must show by a
21 preponderance of the evidence that: one, Ron acquired
22 knowledge or information about the opportunity to purchase the
23 parking lot; two, Ron acquired that information in his capacity
24 as a fiduciary of Columbia and did not acquire that information
25 in his personal capacity or his capacity as an owner or

1 employee of another company; three, the purchase of the parking
2 lot was in Columbia's line of business; four, the purchase of
3 the parking lot would have been advantageous to Columbia; and,
4 five, Columbia was able to purchase the parking lot.

5 If you find that Marie has proved each of these elements by
6 a preponderance of the evidence, then you must find for Marie
7 on this part of her claim. If you find that Marie has failed
8 to prove any one of these elements by a preponderance of the
9 evidence, then you must find for Ron on this part of Marie's
10 claim.

11 As to breach relating to alleged self-dealing transactions,
12 Marie alleges that Ron breached fiduciary duties owed to her by
13 engaging in unauthorized and undisclosed self-dealing
14 transactions involving Columbia and its subsidiaries, on the
15 one hand, and Ron, his sons, or entities they own or control on
16 the other, including transactions involving the fleet sales
17 program, the U.S. Bank Money Center account, also known as the
18 sweep account, the management fees paid to Pond Realty Company
19 doing business as Joseph Management, other transfers from
20 Columbia and its subsidiaries to Pond Realty Company,
21 disbursements categorized as loans or investments to other
22 dealerships, using Columbia employees to perform work for other
23 businesses Ron owns, and the payment of things like club
24 memberships and dues, sports tickets and security services.

25 If you find that Marie has shown, by a preponderance of the

1 evidence, that Ron engaged in undisclosed self-dealing, then
2 Ron is presumed to have breached his fiduciary duties in
3 regards to this particular transaction unless, as explained in
4 the next instruction, Ron proves by a preponderance of the
5 evidence that the transaction was fair to Columbia.

6 Ron engaged in undisclosed self-dealing if Ron engaged in a
7 transaction in which Ron had a material pecuniary interest and
8 that interest reasonably would be expected to affect Ron's
9 judgment in a manner adverse to Columbia, and, two, Ron failed
10 to disclose his interest in the transaction to Columbia.

11 Ron did not engage in undisclosed self-dealing if he did
12 not know about the transaction or transactions in which he is
13 alleged to have an interest, as Ron did not have a duty to
14 disclose transactions of which he was unaware.

15 Fairness. If Marie shows by a preponderance of the
16 evidence that Ron engaged in a transaction or transactions that
17 constitute undisclosed self-dealing, that does not mean that
18 transaction or those transactions are a breach of fiduciary
19 duties. Instead, the burden of proof shifts to Ron to prove,
20 by a preponderance of the evidence, that the transaction or
21 transactions constituting undisclosed self-dealing were fair to
22 Columbia.

23 In determining whether a transaction was fair to Columbia,
24 you must consider whether the transaction was intrinsically
25 fair to Columbia as of the date of the transaction. You should

1 consider all aspects of each transaction in reaching this
2 determination. You should consider whether the transaction was
3 for a legitimate business purpose.

4 If Ron proves by a preponderance of the evidence that an
5 undisclosed self-dealing transaction was fair to Columbia, then
6 you should find that transaction is not a breach of fiduciary
7 duties. If Ron does not prove by a preponderance of the
8 evidence that an undisclosed self-dealing transaction was fair
9 to Columbia, then you should find that the transaction is a
10 breach of fiduciary duties.

11 The third element of Marie's claim is that she must prove
12 by a preponderance of the evidence that Ron proximately caused
13 an injury to Marie that resulted in money damages to Marie.
14 Damage to Marie is an essential element of Marie's claim for
15 breach of fiduciary duty.

16 Even if you determine that Ron failed to demonstrate that a
17 transaction was fair to Columbia, you must separately consider
18 whether Marie has demonstrated by a preponderance of the
19 evidence that a transaction caused damages to Marie.

20 Marie, as the plaintiff, has the burden of proving damages
21 by a preponderance of the evidence. Damages means the amount
22 of money that will reasonably and fairly compensate the
23 plaintiff for any injury you find was caused by the defendant.

24 It is for you to determine what damages, if any, have been
25 proved. Your award must be based upon evidence and not upon

1 speculation, guesswork, or conjecture.

2 Damage is proximately caused by an act or failure to act
3 whenever it appears from the evidence that the act or failure
4 to act played a substantial part in bringing about or actually
5 causing the damage, and that the damage was either the direct
6 result or a reasonably probable consequence of the act or
7 omission. Proximate cause contemplates a probable or likely
8 result, not merely a possible one.

9 A client is charged with the knowledge of his attorney's
10 notice or knowledge of facts or information acquired in the
11 course of the representation for which the attorney has been
12 engaged. As a general rule, an attorney acting within the
13 scope of his authority represents his client, and his acts or
14 omissions are to be regarded as the acts of the person he
15 represents and are equivalent to the acts of the client
16 himself.

17 No duty to declare dividend. A dividend is a distribution
18 of earnings and profit made by a corporation to its
19 shareholders. Dividends are paid from a corporation's surplus,
20 that is, the surplus earnings that remain after defraying every
21 expense of the corporation.

22 Shareholders of an Ohio corporation have no right or
23 entitlement to dividends. The power to declare dividends rests
24 with the directors of the corporation, and a large discretion
25 is given to them whether to retain its surplus profits as part

1 of the working capital or divide it out to the shareholders.

2 An abuse of that discretion may give rise to a cause of action.

3 But plaintiff's claim in this lawsuit is not premised on
4 the failure to declare dividends. In other words, plaintiff's
5 not alleging that defendant breached his duties to her by not
6 declaring a dividend in any particular year.

7 Compensatory damages. If you find that Ron is liable to
8 Marie for breach of fiduciary duties, then you must determine
9 an amount that is fair compensation for all of her damages.
10 These are called compensatory damages. The purpose of
11 compensatory damages is to make a plaintiff whole, that is, to
12 compensate Marie for any damage that she has suffered. Marie
13 must prove her damages by a preponderance of the evidence.

14 If you decide to award compensatory damages, you should be
15 guided by dispassionate common sense. Computing damages may be
16 difficult, but you must not let that difficulty lead you to
17 engage in arbitrary guesswork.

18 On the other hand, the law does not require that a
19 plaintiff prove the amount of its losses with mathematical
20 precision, but only with as much definiteness and accuracy as
21 the circumstances permit.

22 You must use sound discretion in fixing an award of
23 damages, if any, drawing reasonable inferences where you find
24 them appropriate from the facts and circumstances in evidence.

25 Nominal damages. If you find for Marie and decide that Ron

1 breached his fiduciary duties, but you also find that Marie
2 failed to prove by a preponderance of the evidence any actual
3 damages attributable to the breach, then you may award her
4 nominal damages. Nominal means trifling or small.

5 The fact that I've instructed you as to the proper measure
6 of damages should not be considered as indicating any view of
7 mine as to which party is entitled to your verdict in this
8 case. Instructions as to the measure of damages are given for
9 your guidance only in the event you should find in favor of
10 Marie based on a preponderance of the evidence in accordance
11 with the other instructions.

12 Punitive damages. Marie alleges that she should be awarded
13 punitive damages. You may only consider whether Marie is
14 entitled to punitive damages if you've already determined that
15 she has established that Ron breached a fiduciary duty and that
16 Marie is entitled to compensatory damages. If you find for Ron
17 on the claim for breach of duties, fiduciary duties, or if you
18 only award Marie nominal damages, then you may not award
19 punitive damages.

20 If you determine that Marie established by a preponderance
21 of the evidence that Ron breached a fiduciary duty and you
22 award her compensatory damages, then you are -- then you are
23 not required to also award punitive damages to Marie. You may
24 not award punitive damages unless you determine that Marie
25 proved by clear and convincing evidence that Ron acted with

1 malice.

2 Malice means: one, a state of mind characterized by
3 hatred, ill will, or a spirit of revenge or, two, a conscious
4 disregard for the rights and safety of another person that has
5 a great probability of causing substantial harm. Substantial
6 means major or significant and not trifling or small.

7 As to punitive damages, the burden is by clear and
8 convincing evidence. Unlike the other claims in this action,
9 Marie must establish that she is entitled to punitive damages
10 by clear and convincing evidence.

11 Clear and convincing evidence is evidence that produces in
12 your mind a firm belief or conviction as to the matter at
13 issue. Clear and convincing evidence involves a greater degree
14 of persuasion than is necessary to meet the preponderance of
15 the evidence standard. This standard of clear and convincing
16 evidence does not require proof to an absolute certainty, since
17 proof to an absolute certainty is seldom possible in any case.

18 If you decide Ron is liable for punitive damages, you must
19 also decide whether Ron is liable for the reasonable attorney's
20 fees of counsel employed by Marie in the prosecution of this
21 action. If you decide that Ron is liable for those attorney's
22 fees, the Court, the Judge, will determine the amount.

23 You may not award Marie attorney fees unless you first
24 find, first, that Marie is entitled to compensatory damages
25 and, second, that Marie is entitled to punitive damages.

1 I've given you the instructions on the law applicable to
2 this case. I will now instruct you on how to conduct your
3 deliberations in the jury room and to prepare your verdict.

4 Upon retiring to the jury room, you will select one of your
5 number to act as your foreperson. The foreperson will preside
6 over your deliberations and will be your spokesperson here in
7 court. A verdict form has been prepared for your convenience.

8 The verdict must represent the considered judgment of each
9 of you. In order to return a verdict, it's necessary that each
10 juror agree. Your verdict must be unanimous.

11 It is your duty, as jurors, to consult with one another and
12 to deliberate with a view to reaching an agreement, if you can
13 do so without disregard of the individual judgment. You must
14 each decide the case for yourselves, but only after an
15 impartial consideration of the evidence in the case with your
16 fellow jurors. In the course of your deliberations, do not
17 hesitate to reexamine your own views, and to change your
18 opinion, if convinced it is erroneous. But do not surrender
19 your honest conviction as to the weight or effect of evidence
20 solely because of the opinion of your fellow jurors or for the
21 mere purpose of returning a verdict.

22 Remember at all times that you are judges of the facts.
23 Your sole interest is to seek the truth from the evidence in
24 the case.

25 Nothing said in these instructions and nothing in any

1 verdict prepared for your convenience is meant to suggest or
2 convey in any way or manner any suggestion or hint as to what
3 verdict I think you should find. What the verdict shall be is
4 your sole and exclusive duty and responsibility.

5 If it becomes necessary during your deliberations to
6 communicate with me, you may send a note by the courtroom
7 deputy, signed by your foreperson or by one or more members of
8 the jury. No member of the jury should ever attempt to
9 communicate with me by any means other than a signed writing,
10 and I will never communicate with any member of the jury on any
11 subject touching the merits of the case otherwise than in
12 writing, or here orally in open court.

13 Bear in mind that you are never to reveal to any person,
14 not even to me, how the jury stands, numerically or otherwise,
15 on the questions before you until you have reached a unanimous
16 verdict.

17 The Court will place in your possession the exhibits and
18 the verdict form. The foreperson of the jury will be
19 responsible for the return of the exhibits and the verdict form
20 after your verdict has been reached.

21 You will retire after closing arguments to the jury room to
22 deliberate your verdict. The courtroom deputy will confer with
23 you regarding any recess or adjournment.

24 Remember that you must make your decision solely on the
25 evidence that you saw and heard here in court. Do not try to

1 gather any information about the case on your own while
2 deliberating. Don't conduct any experiments inside or outside
3 the jury room. Don't bring any books -- like a dictionary, if
4 those still exists -- or anything else with you to help you
5 with your deliberations. Do not conduct any independent
6 research, reading or investigation about the case. Do not
7 conduct Internet research, no Googling, et cetera, and do not
8 visit any of the places that were mentioned during the trial.
9 Make your decision based only on the evidence that you saw and
10 heard here in the courtroom.

11 Now that the evidence is in and after closing arguments are
12 completed, you will go to the jury room, and you are, of
13 course, free to talk about the case in the jury room with your
14 fellow jurors only. In fact, it's your duty to talk with each
15 other about the evidence, to make every reasonable effort you
16 can to reach unanimous agreement. Talk with each other.
17 Listen carefully and respectfully to each other's views. Keep
18 an open mind as you listen to what your fellow jurors have to
19 say. Try your best to work out your differences. Don't
20 hesitate to change your mind if you're convinced that other
21 jurors are right and that your original position was wrong.

22 But do not ever change your mind just because other jurors
23 see things differently or just to get the case over with. In
24 the end, your vote must be exactly that: your own vote. It's
25 important for you to reach unanimous agreement, but only if you

1 can do so honestly and in good conscience.

2 No one will be allowed to hear your discussions in the jury
3 room, and no record will be made of what you say. You should
4 all feel free to speak your minds. Listen carefully to what
5 the other jurors have to say, and then decide for yourself.

6 Let me finish up by repeating something that I've said to
7 you earlier. Nothing that I have said or done during trial was
8 meant to influence your decision in any way. You decide for
9 yourselves.

10 Now you're going to be presented with some interrogatories
11 preparatory to your verdict form. Written questions are called
12 interrogatories. You must answer them in writing, starting
13 with the first question. You must follow carefully the
14 directions about how to proceed.

15 A question is answered when all jurors agree. All jurors
16 must sign at the end of the interrogatories. If all jurors
17 cannot agree on an answer, you are instructed to report to the
18 Court.

19 I'll now review with you the interrogatories that you will
20 answer during deliberations and from which you will reach your
21 verdict. I caution you not to make any inference by reason of
22 the order in which I read them.

23 All right. These pages, 42 through 60, are what you're
24 going to do upstairs. You're going to answer these questions.
25 I'm going to walk through them with you.

1 Jury Interrogatory Number 1, breach of fiduciary duties
2 based on the alleged usurpation of purchase of lot at 3464
3 Poole Road.

4 Number 1: Did Marie Joseph prove by a preponderance of the
5 evidence that defendant Ronald Joseph knew about the purchase
6 of a parking lot at 3464 Poole Road by Joseph T of C in 2012?
7 You mark yes or no after all seven of you agree to that answer.

8 If the answer to the preceding question is no, this ends
9 your deliberations on this portion of Marie Joseph's claim and
10 you should move on to the next Jury Interrogatory, Number 2.
11 If the answer to the preceding question is yes, proceed to the
12 next question.

13 Did Marie Joseph prove by a preponderance of the evidence
14 that defendant Ronald Joseph acquired knowledge about the
15 purchase of a parking lot at 3464 Poole Road by Joseph T of C
16 in 2012 in his capacity as a majority shareholder or director
17 of Columbia? You mark yes or no when all seven agree.

18 If the answer to 2 is no, this ends your deliberation on
19 this portion of Marie's claim and you should move on to the
20 next Jury Interrogatory, Number 2. If the answer to the
21 preceding question is yes, you proceed to the next question,
22 number 3.

23 Did Marie prove by a preponderance of the evidence that the
24 purchase of a parking lot at 3464 Poole Road by Joseph T of C
25 in 2012 was in Columbia's line of business? You answer yes or

1 no when all seven agree. If the answer's no, that ends your
2 deliberation on this portion. You go to the next Jury
3 Interrogatory, Number 2. If the answer to the preceding
4 question is yes, proceed to the next question.

5 Did plaintiff Marie Joseph prove by a preponderance of the
6 evidence that the purchase of a parking lot at 3464 Poole Road
7 that was, in fact, purchased by Joseph T of C in 2012 would
8 have been advantageous to Columbia?

9 If the answer's no, you're done here and you go to
10 Interrogatory 2. If it's yes, you go to the next question, the
11 next page, number 5.

12 Did plaintiff Marie prove by a preponderance of the
13 evidence that Columbia was able to purchase a parking lot at
14 3464 Poole Road in 2012?

15 If the answer's no, you're done with this portion. You go
16 to Jury Interrogatory 2. If the answer's yes, proceed to the
17 next question.

18 6: Did plaintiff Marie prove by a preponderance of the
19 evidence that the purchase of a parking lot at 3464 Poole Road
20 by Joseph T of C in 2012 proximately caused her monetary
21 damages? If the answer's no, you're done with this. Go to
22 Interrogatory 2. If the answer's yes, you go to question 7.

23 Question 7 states: State below the monetary damages, if
24 any, that plaintiff Marie Joseph proved by a preponderance of
25 the evidence were proximately caused to her by defendant Ronald

1 Joseph in connection with the purchase of a parking lot at 3464
2 Poole Road by Joseph T of C in 2012. This question refers only
3 to compensatory damages. Punitive damages will be addressed in
4 a separate interrogatory. But if there are compensatory
5 damages, you state the amount at the bottom of 43.

6 And now you move to Interrogatory Number 2, breach of
7 fiduciary duties based on alleged usurpation of purchase of lot
8 at 8583 Colerain Avenue.

9 1: Did plaintiff Marie prove by a preponderance of the
10 evidence that defendant Ronald Joseph knew about the purchase
11 of a parking lot at 8583 Colerain Avenue by Joseph Realty LLC
12 in 2014?

13 If your answer is no, that ends your deliberations on this
14 portion. You go to Interrogatory Number 3. If your answer's
15 yes, proceed to the next question.

16 2: Did plaintiff Marie prove by a preponderance of the
17 evidence that defendant Ron acquired knowledge about the
18 purchase of a parking lot at 8583 Colerain Avenue by Joseph
19 Realty LLC in 2014 in his capacity as a majority shareholder or
20 director of Columbia?

21 If the answer's no, you go to Interrogatory Number 3. If
22 the answer's yes, you continue.

23 Question 3: Did plaintiff Marie prove by a preponderance
24 of the evidence that the purchase of a parking lot at 8583
25 Colerain Avenue by Joseph Realty LLC in 2014 was in Columbia's

1 line of business?

2 If no, you go to Interrogatory Number 3. If yes, you
3 continue here to question 4.

4 Did Marie prove by a preponderance of the evidence that the
5 purchase of a parking lot at 8583 Colerain Avenue that was in
6 fact purchased by Joseph Realty LLC in 2014 would have been
7 advantageous to Columbia?

8 If you answer no, you're done with this interrogatory and
9 you go to Interrogatory Number 3. If it's yes, you continue to
10 question 5.

11 Did plaintiff Marie prove by a preponderance of the
12 evidence that Columbia was able to purchase a parking lot at
13 8583 Colerain Avenue in 2014?

14 If the answer to that question's no, you're done with this
15 interrogatory and you go to the next one. If your answer's
16 yes, you continue on this page to question 6.

17 Did Marie prove by a preponderance of the evidence that the
18 purchase of a parking lot at 8583 Colerain Avenue by Joseph
19 Realty LLC in 2014 proximately caused her monetary damages? If
20 your answer's no, you go to the next jury interrogatory.
21 You're done here. But if the answer's yes, you proceed with
22 these questions to number 7.

23 State below the monetary damages, if any, that plaintiff
24 Marie proved by a preponderance of the evidence were
25 proximately caused to her by defendant Ron in connection with

1 the purchase of a parking lot at 8583 Colerain Avenue by Joseph
2 Realty LLC in 2014. This question refers only to compensatory
3 damages and you state the amount, if any, there. Punitive
4 damages will be addressed later.

5 Interrogatory Number 3, breach of fiduciary duties based on
6 fleet sales.

7 Did Marie Joseph, plaintiff, prove by a preponderance of
8 the evidence that Ronald Joseph, defendant, caused Columbia to
9 engage in transactions in the fleet sales program? If the
10 answer's no, this ends your deliberations on this interrogatory
11 and you go to Number 4. If it's yes, continue answering these
12 questions.

13 Number 2: Did plaintiff Marie prove by a preponderance of
14 the evidence that defendant Ron had a material pecuniary
15 interest in the fleet sales program and that that interest
16 reasonably would be expected to affect his judgment in a manner
17 adverse to Columbia?

18 If it's yes, you continue. If it's no, you're done here
19 and go to Interrogatory 4.

20 If it's yes, you go to question 3.

21 Did plaintiff Marie prove by a preponderance of the
22 evidence that defendant Ron failed to disclose his interest in
23 the fleet sales transactions to Marie? If no, you're done with
24 this interrogatory, go to the next. If yes, continue with
25 these questions.

1 As to question 4, if yes: Did defendant Ronald Joseph
2 prove by a preponderance of the evidence that the fleet sales
3 transactions were fair to Columbia? If yes, this ends your
4 deliberations on this portion of the claim. You go to the next
5 jury interrogatory. If the answer is no, you proceed to the
6 next question on the next page, number 5.

7 Did Marie Joseph prove by a preponderance of the evidence
8 that the fleet sales transactions proximately caused her
9 monetary damages? If the answer's no, this ends your
10 deliberations on this portion. You go to the next jury
11 interrogatory, to wit, 4. If your answer is yes, you go to
12 question 6 here.

13 State below the monetary damages, if any, that Marie Joseph
14 proved by a preponderance of the evidence were proximately
15 caused to her by defendant Ronald Joseph in connection with
16 Columbia's participation in fleet sales transactions.

17 This question refers only to compensatory damages.
18 Punitive damages will be addressed later. Fill in the blank if
19 the answer is appropriate.

20 Jury Interrogatory Number 4, breach of fiduciary duties
21 based on U.S. Bank Money Center account. Did plaintiff Marie
22 prove by a preponderance of the evidence that defendant Ron
23 caused Columbia to transfer funds to the sweep account, also
24 known as U.S. Bank Money Center account, which was held in the
25 name of Pond Realty?

1 If the answer to this question is no, this ends your
2 deliberations on this portion and you go to Interrogatory
3 Number 5. If it's yes, you continue here to question 2.

4 Did plaintiff Marie prove by a preponderance of the
5 evidence that defendant Ron had a material pecuniary interest
6 in the transfer of funds from Columbia to the sweep account,
7 also known as U.S. Bank Money Center account, and that that
8 interest reasonably would be expected to affect his judgment in
9 a manner adverse to Columbia? If the answer's no, you're done
10 with this portion. If it's yes, you continue.

11 3: Did plaintiff Marie prove by a preponderance of the
12 evidence that defendant Ron failed to disclose his interest in
13 the transfer of funds from Columbia to the sweep account, also
14 known as the U.S. Bank Money Center account, to Marie? If the
15 answer is no, you're done with this interrogatory. If it's
16 yes, you continue to question 4.

17 Did defendant Ronald Joseph prove by a preponderance of the
18 evidence that the transfers of funds from Columbia to the sweep
19 account, also known as U.S. Bank Money Center account, were
20 fair to Columbia? Yes or no.

21 If the answer is yes, you're done with this interrogatory.
22 If the answer is no, you go to question 5 on page 49.

23 Did plaintiff Marie Joseph prove by a preponderance of the
24 evidence that the transfers of funds from Columbia to the sweep
25 account, also known as U.S. Bank Money Center account,

1 proximately caused her money damages? If the answer is no,
2 you're done with this interrogatory. If it's yes, you move to
3 the next question.

4 6: State below the monetary damages, if any, Marie Joseph
5 proved by a preponderance of the evidence were proximately
6 caused to her by defendant Ronald Joseph in connection with the
7 transfers of funds from Columbia to the sweep account, also
8 known as U.S. Bank Money Center account. This question only
9 refers to compensatory damages, not punitive damages. Fill in
10 the amount, if any, as appropriate.

11 Jury Interrogatory Number 5, breach of fiduciary duties
12 based on transactions with Camargo Cadillac, Gold Circle Mall,
13 and Joseph Development.

14 1: Did plaintiff Marie prove by a preponderance of the
15 evidence that defendant Ronald Joseph caused Columbia to
16 disburse money as either loans or investments to Camargo
17 Cadillac, Gold Circle Mall, and Joseph Development? If the
18 answer's no, you're done with interrogatory number 5. If it's
19 yes, you continue.

20 Question 2: Did plaintiff Marie prove by a preponderance
21 of the evidence that defendant Ronald Joseph had a material
22 pecuniary interest in the disbursements from Columbia to
23 Camargo Cadillac, Gold Circle Mall, and Joseph Development, and
24 that defendant's interest reasonably would be expected to
25 affect his judgment in a manner adverse to Columbia?

1 If the answer is no, you're done with this interrogatory.
2 If it's yes, you proceed to question 3.

3 Did plaintiff Marie prove by a preponderance of the
4 evidence that defendant Ron failed to disclose his interest in
5 the disbursements from Columbia to Camargo Cadillac, Gold
6 Circle Mall, and Joseph Development to Marie?

7 If the answer's no, you're done with this interrogatory.
8 If it's yes, you proceed to the question below, number 4.

9 Did defendant Ron prove by a preponderance of the evidence
10 that the disbursements from Columbia to Camargo Cadillac, Gold
11 Circle Mall, and Joseph Development were fair to Columbia?

12 If the answer's yes, you're done with this interrogatory.
13 If it's no, you continue to the next question on page 51.

14 Did plaintiff Marie prove by a preponderance of the
15 evidence that the disbursements from Columbia to Camargo
16 Cadillac, Gold Circle Mall, and Joseph Development proximately
17 caused her monetary damages?

18 If the answer's no, you're done with this interrogatory.
19 If it's yes, you proceed to the final question on this
20 interrogatory.

21 State below the monetary damages, if any, that plaintiff
22 Marie Joseph proved by a preponderance of the evidence were
23 proximately caused to her by defendant Ronald Joseph in
24 connection with the disbursements from Columbia to Camargo
25 Cadillac, Gold Circle Mall, and Joseph Development. This

1 question only refers to compensatory damages. Punitive damages
2 will be addressed later. You fill in the amount, if any, as
3 appropriate.

4 Jury Interrogatory Number 6. 1: Did plaintiff Marie
5 Joseph prove by a preponderance of the evidence that defendant
6 Ronald Joseph caused Columbia to pay management fees to Pond
7 Realty Company doing business as Joseph Management?

8 If the answer to this question is no, this ends your
9 deliberations on this interrogatory and you move to the next
10 one. If it's yes, you continue with the questions.

11 2: Did plaintiff Marie Joseph prove by a preponderance of
12 the evidence that defendant Ronald Joseph had a material
13 pecuniary interest in the payment of management fees by
14 Columbia to Pond Realty Company doing business as Joseph
15 Management, and that interest reasonably would be expected to
16 affect his judgment in a manner adverse to Columbia?

17 If your answer's no, you're done with this interrogatory.
18 You go to the next. If it's yes, you continue to question 3.

19 Did plaintiff Marie prove by a preponderance of the
20 evidence that defendant Ronald Joseph failed to disclose his
21 interest in the payment of management fees by Columbia to Pond
22 Realty Company doing business as Joseph Management to Marie?

23 If the answer's no, you're done with this interrogatory.
24 If it's yes, you continue to question 4.

25 Did defendant Ronald Joseph prove by a preponderance of the

1 evidence that the management fees paid by Columbia to Pond
2 Realty Company doing business as Joseph Management were fair to
3 Columbia?

4 If the answer's yes, you're done with this interrogatory
5 and you go to the next one. If your answer's no, you go to
6 questions 5 and 6.

7 5: Did plaintiff Marie prove by a preponderance of the
8 evidence that the payment of management fees by Columbia to
9 Pond Realty Company doing business as Joseph Management
10 proximately caused her monetary damages? If your answer's no,
11 you go to the next jury interrogatory. If it's yes, proceed to
12 the next question here, 6.

13 State below the monetary damages, if any, that plaintiff
14 Marie proved by a preponderance of the evidence were
15 proximately caused to her by defendant Ronald Joseph in
16 connection with the payment of management fees by Columbia to
17 Pond Realty Company doing business as Joseph Management.

18 This question refers only to compensatory damages, not
19 punitive damages, which will be addressed later. You state the
20 amount, if any, as appropriate.

21 Jury Interrogatory Number 7, breach of fiduciary duties
22 based on other payments and benefits.

23 Did plaintiff Marie Joseph prove by a preponderance of the
24 evidence that defendant Ronald Joseph caused Columbia to make
25 other miscellaneous payments, including other transfers from

1 Columbia and its subsidiaries to Pond Realty Company, other
2 inter-company transactions, payments to Columbia employees for
3 work performed for other companies, and payments for benefits
4 such as club memberships and dues, sports tickets and security
5 services?

6 This section does not cover any of the transactions
7 referred to in the previous jury interrogatories. If your
8 answer to the first question is no, this ends your
9 deliberations on this jury interrogatory. If it's yes, you
10 proceed to the following question.

11 2: Did plaintiff Marie prove by a preponderance of the
12 evidence that defendant Ronald Joseph had a material pecuniary
13 interest in Columbia making other miscellaneous payments,
14 including other transfers from Columbia and its subsidiaries to
15 Pond Realty Company, other inter-company transactions, payments
16 to Columbia employees for work performed for other companies,
17 and payments for benefits such as club memberships and dues,
18 sports tickets and security services, and that that interest
19 reasonably would be expected to affect his judgment in a manner
20 adverse to Columbia?

21 This section doesn't include any of the transactions
22 referred to in the previous jury interrogatories. If your
23 answer is no, you're done with this interrogatory. If it's
24 yes, you proceed to question 3.

25 Did plaintiff Marie prove by a preponderance of the

1 evidence that defendant Ronald Joseph failed to disclose his
2 interest in Columbia's making other miscellaneous payments,
3 including other transfers from Columbia and its subsidiaries to
4 Pond Realty Company, other inter-company transactions, payments
5 to Columbia employees for work performed for other companies,
6 and payments for benefits such as club memberships and dues,
7 sports tickets and security services to Marie? Was this failed
8 to be disclosed to Marie.

9 This section doesn't include any of the transactions
10 referred to in the prior jury interrogatories. If your answer
11 is no, you're done with this jury interrogatory. If it's yes,
12 you proceed to question 4.

13 Did defendant Ronald Joseph prove by a preponderance of the
14 evidence that all other miscellaneous payments made by
15 Columbia, including other transfers from Columbia and its
16 subsidiaries to Pond Realty Company, other inter-company
17 transactions, payments to Columbia employees for work performed
18 for other companies, and payments for benefits such as club
19 memberships and dues, sports tickets and security services,
20 were fair to Columbia?

21 If the answer's yes, you're done with this interrogatory.
22 If it's no, you continue to 5.

23 Did plaintiff Marie prove by a preponderance of the
24 evidence that other miscellaneous payments by Columbia,
25 including other transfers from Columbia and its subsidiaries to

1 Pond Realty Company, other inter-company transactions, payment
2 to Columbia employees for work performed for other companies,
3 and payments for benefits such as club memberships and dues,
4 sports tickets and security services, proximately caused Marie
5 monetary damages?

6 This section doesn't cover any of the transactions already
7 referred to in the previous interrogatories. If the answer's
8 no, this ends your deliberations on this jury interrogatory.
9 If the answer's yes, you proceed to question 6.

10 State below the monetary damages, if any, that Marie proved
11 by a preponderance of the evidence were proximately caused to
12 her by defendant Ronald Joseph in connection with other
13 miscellaneous payments made by Columbia, including other
14 transfers from Columbia and its subsidiaries to Pond Realty
15 Company, other inter-company transactions, payments to Columbia
16 employees for work performed for other companies, and payments
17 for benefits such as club memberships and dues, sports tickets
18 and security services.

19 This section of the verdict form does not cover any of the
20 transactions referred to in the prior interrogatories.
21 Question 6 refers only to compensatory damages, not punitive
22 damages, which will be dealt with in Jury Interrogatory Number
23 8.

24 Jury Interrogatory Number 8, punitive damages. You should
25 only respond to this interrogatory if you found for Marie on

1 any of the above claims and if you awarded Marie more than
2 nominal compensatory damages. If you found for Ron on all
3 claims, or if you awarded Marie no compensatory damages or
4 nominal compensatory damages, then your deliberations are
5 complete and you should sign the form at the bottom of these
6 instructions.

7 So as to punitive damages, 1: Did plaintiff Marie prove by
8 clear and convincing evidence that defendant Ron breached
9 fiduciary duties owed her and, in doing so, acted with malice
10 towards plaintiff Marie in matters related to Columbia?

11 If your answer is no, your deliberations are complete and
12 you move to the form following. If the answer's yes, you
13 proceed to the following question.

14 2: What amount of punitive damages are fair and reasonable
15 to award plaintiff Marie Joseph given all the facts and
16 circumstances?

17 Ohio law limits punitive damages in a civil case such as
18 this to a total of not more than \$350,000, so you may not award
19 more than that amount as punitive damages.

20 3: Is defendant Ronald Joseph liable for the reasonable
21 attorney fees of counsel employed by plaintiff Marie Joseph in
22 the prosecution of this action? If the answer to this question
23 interrogatory is yes, then the Judge will determine the amount
24 of reasonable attorney's fees.

25 And then on page 58 each of you sign, verifying your

1 answers to the preceding jury interrogatories, and you proceed
2 to the verdict forms.

3 On page 59 we help you with the verdict forms. You have to
4 complete one of the two attached verdict forms. You must sign
5 and date the verdict for plaintiff if you answered yes to one
6 or more of the following questions: Jury Interrogatory Number
7 1, question 6; Jury Interrogatory Number 2, question 6; Jury
8 Interrogatory Number 3, question 5; Jury Interrogatory Number
9 4, question 5; Jury Interrogatory Number 5, question 5; Jury
10 Interrogatory Number 6, question 5; or Jury Interrogatory
11 Number 7, question 5.

12 If you did not answer any of the above-listed questions, or
13 did not answer yes to any of the above-listed questions, you
14 must sign and date the verdict form for defendant Ronald
15 Joseph. Once you have completed one of the attached verdict
16 forms, please notify the courtroom deputy.

17 So you use page 59 to determine whether you sign the
18 verdict form for the plaintiff Marie Joseph or you sign the
19 verdict form for defendant Ronald Joseph. You all sign your
20 name reflecting your decision.

21 I'm going to send you upstairs with all your jury
22 instruction packages and the interrogatories, but as the
23 exhibits go up with the notebooks, I'm going to send you up one
24 packet of the jury interrogatories and the verdict forms. That
25 should be placed in the foreperson's hand, and that's the one

1 you fill out, so we've only got one floating. The rest of them
2 are stapled to yours for your convenience.

3 These instructions are designed to assist you. If you
4 really follow them closely and walk through them, you're
5 perfectly capable of doing this. If you have a question of me,
6 it's got to be in writing. It's got to be signed by the
7 foreperson or by a juror. If you send me a question, I've got
8 to go round up the lawyers, discuss it with them, and then
9 write you an answer, and I may answer "It's up to you." You
10 need to decide what the facts are. You walk through the law on
11 the jury interrogatories and reach a verdict that is fair and
12 just based on the evidence and the law.

13 After closing arguments, you go upstairs, the first thing
14 you do is pick a foreperson. That person has no power more
15 than any other person. That person's job is to make sure
16 everybody's heard and that you fill out the forms
17 appropriately.

18 You listened carefully, and that was a lot of reading. I
19 thought the Judge did a really good job reading out loud.

20 (Laughter.)

21 THE COURT: And I'm not going to require you to listen
22 to me more reading instructions. The lawyers are going to make
23 closing arguments. The plaintiff Marie Joseph's lawyer gets to
24 go first and last, the defendant's lawyers go second, and when
25 they're done, you go to the jury room and begin your

1 deliberations, and I believe we're providing lunch.

2 Do you need a break before we launch into the lawyers? Do
3 you need a ten-minute break, or are you ready to go?

4 JUROR NO. 4: I could go for a break.

5 THE COURT: We're ready to go.

6 Mr. Murphy, are you prepared to give closing argument on
7 behalf of plaintiff?

8 MR. MURPHY: Yes, Your Honor.

9 THE COURT: Very well. You may proceed, unless you
10 need a short break to get stuff stirred up.

11 Don't break that.

12 AUDIOVISUAL SPECIALIST ST. JOHN: Sorry.

13 THE COURT: We're going to proceed. Is there any
14 juror who really needs a break?

15 (No response.)

16 THE COURT: They're ready for you, sir.

17 MR. MURPHY: All right.

18 (Excerpt of closing arguments was previously transcribed
19 and filed at U.S. District Clerk of Courts Docket No. 220.)

20 THE COURT: Very well.

21 Members of the jury, it's now time to do your duty, to go
22 to the jury room and deliberate, being certain that each of the
23 seven of you have a full opportunity to state what you see and
24 state what you think. Work together, work toward reaching a
25 unanimous verdict, and every minute you're up there, know that

1 the Court and the community and the participants in this
2 lawsuit are extraordinarily grateful for the work you have done
3 and will now go finish.

4 Out of respect for you, we'll rise as you leave.

5 COURTROOM DEPUTY: All rise for the jury.

6 (Jury out at 1:24 PM.)

7 BEFORE THE COURT

8 THE COURT: You may all be seated.

9 The jury has left the room and has gone to deliberate. We
10 want to send up momentarily the original interrogatories and
11 verdict forms and the exhibits of the parties.

12 Have the parties worked through the exhibits and cleared
13 with the courtroom deputy that both notebooks properly contain
14 the admitted exhibits, or do you need to look at that before we
15 send it up?

16 From the plaintiff's perspective?

17 MR. GREGG: We provided our plaintiff's admitted
18 exhibits this morning. I have not conferred with Mr. Lang
19 since then, but I'm happy to do so before they get sent up to
20 the jury.

21 THE COURT: Very well. See if we can expedite that.

22 The same over there?

23 MR. BURKE: Yes, Your Honor.

24 THE COURT: Which lawyer is going to work that
25 through?

1 MR. BURKE: My paralegal and Jacob, I think, are the
2 ones who know a lot more than I do.

3 THE COURT: Very well. Well, I'd like to get them up
4 soon.

5 We're going to recess momentarily, and I need to be able to
6 reach you.

7 Do we have a cellphone number for plaintiff that will be
8 turned on with a ringer such that we can call one cellphone and
9 find you?

10 MR. LANDEN: Yes, Your Honor.

11 THE COURT: Will you deliver that to the courtroom
12 deputy. Unless you want to spread it across the record at this
13 time.

14 MR. LANDEN: That's all right. I'll hand it to him.

15 THE COURT: All right.

16 Do we have one number we can get you on a cell?

17 MR. BURKE: Yes, Your Honor.

18 THE COURT: And the phone will be turned on?

19 MR. BURKE: We'll get it to the deputy.

20 THE COURT: All right.

21 MR. BURKE: Your Honor, I take it you'll want us back
22 here by the end of the day for jury dismissal?

23 THE COURT: Yeah. At 4:30 I'd ask the lawyers come
24 back such that we'll try and get the jury released at or around
25 that time if we have not heard from them beforehand. The

1 reason I need your phone number, as you know, is if there are
2 any questions or if we get a verdict.

3 Well, it's been a long, hard slog, and it's now in the
4 hands of seven ordinary citizens. We're in recess till we
5 communicate with you.

6 MR. BURKE: Thank you, Your Honor.

7 COURTROOM DEPUTY: All rise. This court is in recess.

8 (Proceedings recessed at 1:26 PM.)

9 (In open court at 4:31 PM, no jury present.)

10 THE COURT: Please be seated. Thank you.

11 We're back on the record in *Joseph v. Joseph*. The jury's
12 in the jury room deliberating. Plaintiff is here with her
13 lawyers. Defendant is here with his lawyers.

14 It's 4:31. I asked the courtroom deputy to go upstairs and
15 ask the jury if they're ready to recess for the day or if they
16 wanted to continue more for today, that the normal break time
17 is 4:30, and they have elected to recess for the day. I'm
18 going to call for them, bring them down to the courtroom,
19 admonish them, and send them home and send us all on our ways.

20 Anybody need to be heard before we proceed in that way?
21 From plaintiff's perspective?

22 MR. MURPHY: No, Your Honor.

23 THE COURT: Defense?

24 MR. BURKE: No, Your Honor.

25 THE COURT: All right. Let's get the jury.

1 MR. BURKE: Do you want us back tomorrow, Your Honor?

2 THE COURT: Yes, please.

3 MR. BURKE: Tomorrow morning?

4 THE COURT: 9:30.

5 MR. BURKE: Thank you.

6 THE COURT: Very well. We just want to show them that
7 you guys are engaged and eager to hear the results of their
8 work.

9 COURTROOM DEPUTY: All rise for the jury.

10 (Jury in at 4:33 PM.)

11 THE COURT: The jurors can be seated as they join us,
12 the court reporter as well.

13 You may all be seated. The seven jurors have rejoined us
14 in the courtroom. The parties and the lawyers are here.

15 It's a little bit after 4:30. Our typical time to break is
16 4:30. I inquired, and you're ready to break. I wanted you
17 down here in the courtroom to make sure all seven of you were
18 alive and breathing, and you are. So we're going to break for
19 the day and ask that you come back at 9:30.

20 Go to the jury room. I'll make you walk down again, put
21 you in the box, count noses, and send you up at 9:32 to
22 continue your deliberations.

23 Does anybody want to tell me what the three instructions
24 are over the break? One, don't talk to anybody about it.

25 A JUROR: Right.

1 THE COURT: You're allowed to talk to yourselves, but
2 only in the jury room. And if at any point you want to take a
3 break in the jury room, you can take a break, but no discussion
4 of the case until all seven are back in the room ready to go.

5 So don't discuss it with anyone. And people are going to
6 ask you, "Ohh, you're deliberating? Oh. How's it going?"
7 Unh-unh. Nothing. No independent research. I guess that's
8 keep an open mind until you reach your decision.

9 We appreciate the work you're doing. I hope you have a
10 good, comfortable break. I ask that you be in the jury room by
11 9:25 at the latest so we can bring you in the courtroom at 9:30
12 and send you up to start talking. Don't start talking until
13 you've been in the courtroom and sent up.

14 Out of enormous respect for you, we'll rise as you leave
15 for the day.

16 COURTROOM DEPUTY: All rise for the jury.

17 (Jury out at 4:35 PM.)

18 BEFORE THE COURT

19 THE COURT: The jury's left. You may be seated.

20 We're ready to break for the evening. I understand there
21 was an inquiry about whether you could start to get your stuff
22 out of the courtroom. Absolutely.

23 Is there anything else that requires the Court's attention
24 before we break for the day?

25 MR. MURPHY: No, Your Honor.

1 MR. BURKE: No, Your Honor. Thank you.

2 THE COURT: Very well. Have a good evening. We're in
3 recess till 9:30. I'll see you all in the courtroom at that
4 time.

5 COURTROOM DEPUTY: All rise. Court is in recess.

6 (At 4:35 PM, the trial was recessed, to be continued on
7 Tuesday, October 23, 2018, at 9:30 AM.)

8 - - -

9 MISCELLANEOUS

10 Court's Charge to the Jury 8
11 Dismissal of Jury 56

12 - - -

13 C E R T I F I C A T E

14 I, Luke T. Lavin, RDR, CRR, the undersigned, certify
15 that the foregoing is a correct transcript from the record of
16 proceedings in the above-entitled matter.

17
18 s/Luke T. Lavin
19 Luke T. Lavin
20 Official Court Reporter
21
22
23
24
25

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